

FUNDAMENTALS OF TRIAL ADVOCACY COURSE

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CROSS EXAMINATION

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Cross Examination Fundamentals of Prosecution

- **Reasons Prosecutors Do Not Enjoy Cross**
 - Lack of _____
 - Lack of _____
 - Lack of _____
- **Reality:**
 - Prosecutors can effectively do a cross examination
- **What is Cross Examination?**
 - Time to test the _____ of a witness
 - Time to cast _____ on testimony
 - Time to cast doubt on _____
- **What Cross Examination is NOT?**
 - Time to:
 - _____
 - _____
 - _____
 - Time to elaborate on irrelevant _____ issues
 - Time to _____ damaging testimony
- **Goals:**
 - Confirm _____ of case
 - _____ your case
 - Corroborate your case
 - _____ any damage caused by witness
 - Discredit:
 - _____
 - _____
 - Demonstrate how “damaging testimony” is _____
- **WING IT?**
 - DO NOT:
 - _____
 - _____ to hear/see what witness says on the stand
 - Wait to see if Defendant will testify and see what he/she has to say

- **Preparation is Key to an Effective Cross-Examination**
 - **6 Ps:** _____
 - **Must prepare** _____ **witness takes the stand**
 - **Know Yourself** = _____ **Case**
 - **Know Your Enemy** = _____ **in case**
 - **First—You must know:**
 - _____
 - _____
 - _____
 - _____
 - _____
 - **Must always advance State's Theory & Theme of Case**
 - **Second**
 - **Identify and Highlight portions of your case which are most susceptible to** _____ **by defense.**
 - **Third**
 - **Identify elements or points of your case that defense must** _____
 - **Fourth**
 - **Know the** _____
 - **How are they going to try and beat me?**
 - **Who are the defense witnesses?**
 - **What is their testimony?**
 - **Fifth**
 - **Arm yourself to defeat the defendant's attacks on your case.**
- **How do you prepare?**
 - **Jury Instructions:**
 - **List out the elements**
 - **Under each element put down each piece of evidence/testimony you have to prove the element**
 - **Ask Questions:**
 - **Where am I** _____ **?**
 - **Outline of Jury Instructions will be a visual display of your weaknesses and issues in the case.**
 - **Where am I** _____ **?**
 - **What must defense concede?**

- What information can you get out that will be helpful, but you can be sneaky about to use against defense?
- Know your enemy:
 - Where can you learn about the enemy?
 - _____ Defenses
 - 15.2
 - Deviation Requests
 - Settlement Conferences
 - Chats with _____
 - _____
- MAKE A PLAN
 - Groups of Topics / Subjects = _____ in Trial
 - What type of Witness are you dealing with?
 - Fact
 - Family, Friend
 - Stranger
 - Expert
 - What does the witness plan on to testify about?
 - Can they offer something to my case the defendant not offering?
 - Does the witness hurt me?
 - No
 - can you flip the witness to be your witness
 - Do you need to ask any questions?
 - Yes – how can you attack their credibility
 - Credibility Factor
 - _____ = believable
 - _____ = very dangerous; ready to tank your case
 - EXPERTS:
 - Do your homework
 - Pretrial Activity
 - Force Disclosure
 - Interviews
 - MIL
 - Plan Cross

- **ORGANIZATION OF QUESTIONS**

- Order to Proceed**

- _____
 - _____
 - _____

- **Concessions:**

- Anything that makes witness look _____ if they disagree
 - Defendant—get them to admit _____

- **Attack**

- **Type of Questions to Ask**
 - **Leading Questions**

- **Direct Questions**

- **Open Ended Questions**

- **Focus on _____**

- **Lies contains a portion of _____; only attack the lie**
 - **Ask:**

- **What is true in the statement**
 - **What is true about the character**
 - **Any perspective true or helpful to your case**

- If NO – EXPOSE THE LIAR**

- **Impeachment—Be prepared with a cheat sheet**

- **End Strong—do not ask the ‘one’ too many question**

- **EXECUTION**

- @ TRIAL—fun begins**

- **APPROACH**

- **Don’t be a fool it matters!**
 - **You are being Judged Constantly**
 - **Credibility**

- Likeability
- Appearance
- Tone
- Body language
- Juries will punish you

Before you ask the witness a question you need to answer:

- **DID THE WITNESS HURT ME?**
 - No
 - Can I flip them to be my witness?
 - Do I even need to ask questions?
 - YES
 - DESTROY THEM
 - DESTROY THEIR CREDIBILITY
- **Maintain Control of Witness**
 - Don't let them ramble
 - Don't let them explain
 - Make them answer your questions
- **Maintain Control of Yourself**
 - Do not get angry – Porker Face People
 - Do not get frustrated
 - Do not answer their questions
- **Remember you are in Control During Cross**
 - Follow Your Outline
 - Keeps you organized
 - Keeps you focused
 - Keeps you on track of advancing your theme and theory of the case
 - Limits witness from advancing defense theory
 - Limits Jurors from being confused
- **Keep your questions short.**
 - One fact per question
- **Remember**
 - You cannot control something that is waiting to tank your case
 - Do not try to outsmart the witness
 - Do not let the witness retell their 'story'
 - Control what you can Control
 - Advance your theme
 - Advance your theory